

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RAYMOND J. BERGERON DAVILA,

Plaintiff,

v.

Case No. 22-C-298

RANDALL HEPP, et al.,

Defendants.

ORDER

Plaintiff Raymond J. Bergeron Davila is a prisoner confined at Waupun Correctional Institution who is representing himself in this 42 U.S.C. §1983 case. On March 8, 2022, Plaintiff filed a complaint alleging that his civil rights were violated. Dkt. No. 1. The following day, on March 9, 2022, the Clerk's office mailed Plaintiff a letter explaining that he had to submit within twenty-one days either: (1) the full civil case filing fee of \$402.00; or (2) a motion for leave to proceed without prepayment of the filing fee, along with a certified copy of his institutional trust account statement for the past six months. Dkt. No. 2. The letter warned Plaintiff that, "Failure to comply with this requirement may result in the Court's dismissal of your case." *Id.*

Twenty-one days have passed and Plaintiff has not submitted either item. Instead, he has filed a "motion for an order" regarding the initial partial filing fee. Dkt. No. 4. Plaintiff asks the Court to use the initial partial filing fee calculation from a different case he filed in December 2021 and order the institution to take that amount (\$127.15) from his release account to satisfy the initial partial filing fee in this case. *Id.* The Court cannot do that. The Prison Litigation Reform Act (PLRA) is mandatory and requires the Court to assess "an initial partial filing fee of 20 percent of

the greater of—(A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.” *See* 28 U.S.C. § 1915(b)(1). The Court does not have any discretion to ignore or overlook the Plaintiff’s institutional trust account statement for the six months “immediately preceding” the filing of the complaint and to instead order an initial partial filing fee that was calculated in December 2021 based on the amount of money he had in his account at that time. Though there is a three month overlap in the trust account statements between Plaintiff’s 2021 case and this case, significant changes may have occurred in Plaintiff’s bank account during that time period that could result in a different fee calculation. Therefore, the Court will deny the “motion for an order” regarding the initial partial filing fee. As explained in the Clerk’s letter, if Plaintiff wants to proceed with this case, he must submit either (1) the full civil case filing fee of \$402.00; or (2) a motion for leave to proceed without prepayment of the filing fee, along with a certified copy of his institutional trust account statement for the past six months. The Court will give Plaintiff 14 additional days to comply with this order. Failure to comply with this order will result in dismissal of this case.

The Court notes that, once it has Plaintiff’s motion for leave to proceed without prepayment of the filing fee and a certified copy of his institutional trust account statement for the past six months, it will issue an order setting the initial partial filing fee in this case. That order will allow Plaintiff to use his release account to pay the initial partial filing fee. Plaintiff does not need a separate order from the Court to use his release account to pay the initial partial filing fee in this case.

IT IS THEREFORE ORDERED that plaintiff’s motion for an order regarding the initial partial filing fee (Dkt. No. 4) is **DENIED**. If Plaintiff wants to proceed with this case, he must

submit within 14 days either (1) the full civil case filing fee of \$402.00; or (2) a motion for leave to proceed without prepayment of the filing fee, along with a certified copy of his institutional trust account statement for the past six months. Failure to comply with this order will result in dismissal of this case.

Dated at Green Bay, Wisconsin this 1st day of April, 2022.

s/ William C. Griesbach
William C. Griesbach, District Judge
United States District Court